

Item No. 10
Attachment 4

From: Darrin Polhemus
To: Chehreh Komeylyan; Greg Gearheart; Karen O'Haire; Margie Youngs
Date: 11/27/02 8:24AM
Subject: Re: Enforcement Questions

Chehreh,

Your defense is a little indirect, as the Q&A document does not directly speak to this circumstance. However, the premise, as supported by Q&A #35 and #39 is that if they are in violation then they are subject to MMPs (also look at #35 and #40). Since none of us are omniscient, the only way we can tell if they are in violation is based on their sampling event. Thus, we issue MMPs when a sample indicates there is violation, unless there is evidence that the sample is wrong.

As for increasing the frequency of testing upon a sample being in violation, I would approach it from the opposite direction that I suspect they will. I assume they will argue that it is punitive to increase the frequency. I would try to rest my argument on the basis that the higher frequency of testing is required to determine the extent of the violation and to aid in determining when compliance has been achieved. However, in order to reduce the burden on the discharger of continuously sampling at the higher rate, the RB as reduced the frequency until a violation is discovered. This is a statistically sound sampling procedure and under certain circumstance does a good job of balancing our need for monitoring with the associated cost and burden on the discharger. In essence, they have been getting a deal on the monitoring requirements, and if they wish we could crank it up to that level continuously.

Hope that is helpful.

Darrin

>>> Margie Youngs 11/26/02 11:20AM >>>
Chehreh,

The enforcement policy does not address the issue and I don't think it is covered in the Q&A (<http://execweb/caeu/index.htm>). I think the answer depends on the language in the permit. Assuming that the permit clearly applies the effluent limits to additional sampling, they are subject to MMPs (unless the single operational upset definition applies to them).

They could also be subject to a discretionary ACL...\$\$\$

Margie Youngs (916)341-5890

>>> Chehreh Komeylyan 11/26/02 07:46AM >>>
Gentlemen,

I work in RWQCB - region 9 and I have an item for the December board meeting. This is a situation where the discharger failed toxicity tests and as ordered by the permit started sampling more frequently (bi-weekly). They are contending that the additional samples taken during the month should not be subject to MMPs.

What is my defense for this? I know that any additional sampling is subject to effluent limits and enforcement, but where does the enforcement policy or any other policy tell me that?
Thank you for the help

C. Sherrie Komeylyan
Water Resource Control Engineer
Industrial Compliance Unit
RWQCB-San Diego
(858) 467-2734
(858) 571-6972 fax